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**MUNICIPAL CORPORATIONS—USE OF STREET RAILWAY FOR FREIGHT CARS—ADDITIONAL SERVITUDE.**—A street railway was used for the transportation of freight cars, not exceeding two at a time, between the factories and the freight yards of a commercial railroad within the city limits. Action was brought by an abutting owner for compensation under the claim that this was additional servitude. *Held*, the plaintiff cannot recover. *Turner v. North Carolina, etc., Corp.* (N. C.), 93 S. E. 998.

There is much conflict of judicial opinion throughout the United States as to what does or does not constitute additional servitude on the streets so as to entitle the abutting owners to compensation. In the majority of states the erection of telegraph and telephone poles in the street is held an additional servitude. *LILE, NOTES ON MUN. CORP.*, 23. But the opposite view is held by quite a respectable minority. *Maxwell v. Central District, etc., Co.*, 51 W. Va. 121, 41 S. E. 125; *Mager v. Overshiner*, 150 Ind. 127, 40 L. R. A. 370.

On the question whether the transportation of freight on street railways imposes an additional servitude the courts are similarly divided. Carriage of freight distinguishes an ordinary commercial railroad from a street railway. The operation of the latter for the transportation of freight is an additional burden on the street. *Rische v. Texas Transp. Co.*, 27 Tex. Civ. App. 33, 66 S. W. 324. So where a horse railway was used to convey freight from one railway depot to another within a city it was held to be an additional burden. *Carli v. Stillwater Street R., etc., Co.*, 28 Minn. 373, 10 N. W. 205, 41 Am. Rep. 290. The same decision was arrived at where an electric railway, carrying passengers and freight between two towns, passed through the streets of an intermediate village. *Chicago & N. W. R. Co. v. Milwaukee, etc., R. Co.*, 95 Wis. 561, 70 N. W. 678, 60 Am. St. Rep. 136, 37 L. R. A. 856. Where a street steam railway, for carrying passengers only, was converted into one for freight and passengers with larger engines and larger cars, it was held, after the change in equipment, to be an additional servitude. *Grossman v. Houston, etc., R. Co.*, 99 Tex. 641, 92 S. W. 836. And where the Public Service Commission of New York required the builder of a subway to deposit the excavated material at a certain point in the city and gave permission for the construction of a tramway to convey the material to that point, it was held to be an additional servitude. *Bradley v. Dignon Cont. Co.*, 157 App. Div. 237, 141 N. Y. Supp. 852.

In support of the holding in the instant case there is also a strong minority. A street railway operated by steam and carrying freight and passengers is not an additional servitude entitling the abutting owners to compensation, unless access to premises is interfered with, or the right to air or light is impaired. *Montgomery v. Santa Anna, etc., R. Co.*, 104 Cal. 186, 37 Pac. 786, 25 L. R. A. 654, 43 Am. St. Rep. 89. Where a private company, with the consent of the selectmen of the town, constructed a horse railway to convey its granite from the quarry to the main line of the railway it was held not to be an additional burden on the streets. *White v. Blanchard Bros.*, 178 Mass. 363, 59 N. E. 1025. See also *Kip v. Davis-Daly Copper Co.*, 41 Mont. 509, 110 Pac. 237. An ordinary steam railway which transports passengers and freight along

the streets of a town does not constitute an increased burden. *Gaus & Sons Mfg. Co. v. St. Louis, etc., R. Co.*, 113 Mo. 308, 18 L. R. A. 339; *Seibel-Suessdorf, etc., Co. v. Manufacturers R. Co.* (Mo.), 130 S. W. 288. It is not an additional servitude for a street railway to transport the freight cars of an ordinary steam railway over its tracks. *Percy v. Lewiston, etc., R.*, 113 Me. 106, 93 Atl. 43. Even where an interurban electric railway carried baggage, mail and light express matter, in not more than two cars at a time, it was held not to be an additional servitude. *Mordhurst v. Fort Wayne, etc., Co.*, 163 Ind. 268, 71 N. E. 642, 66 L. R. A. 105, 106 Am. St. Rep. 222, 2 Ann. Cas. 967.

Though the holding in the instant case is opposed to the weight of authority, it cannot be denied that on reason and principle it is correct. The use of the street railway for conveying the freight from the factories to the main line depot, and vice versa, so far from increasing the burden on the streets, actually diminishes it to a great extent by dispensing with the numerous horse wagons and motor trucks that would be necessary to transport the material now carried in the freight cars.

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